BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

A-R CABLE SERVICES, INC. A-R CABLE PARTNERS CABLEVISION OF FRAMINGHAM, INC. CHARTER COMMUNICATIONS GREATER WORCESTER CABLEVISION, INC. MEDIAONE OF MASSACHUSETTS, INC. MEDIAONE OF PIONEER VALLEY, INC. MEDIAONE OF SOUTHERN NEW ENGLAND, INC. MEDIAONE OF WESTERN NEW ENGLAND, INC. MEDIAONE ENTERPRISES, INC. MEDIAONE OF NEW ENGLAND, INC. PEGASUS COMMUNICATIONS TIME WARNER CABLE *Complainants*, v. MASSACHUSETTS ELECTRIC COMPANY *Respondent*.	D.T.E. 98-52

INITIAL BRIEF OF A-R CABLE SERVICES, INC., ET ALS., COMPLAINANTS

By their attorneys,

Alan D. Mandl
Ottenberg, Dunkless, Mandl & Mandl LLP
260 Franklin Street
Boston, Massachusetts 02110
(617) 261-6566

William D. Durand
Executive Vice President, Chief Counsel
New England Cable Television Association, Inc.
100 Grandview Road
Braintree, Massachusetts 02184
(781) 843-3418

Dated: September 17, 1998

TABLE OF CONTENTS

I. STATEMENT OF PROCEEDINGS

A. Legal Background

On April 15, 1998, the Department determined the pole attachment rates of Boston Edison Company in *Cablevision of Boston, Inc., et als,* D.P.U./D.T.E. 97-82 ("*Cablevision of Boston*"), the first Department decision regarding pole rates for aerial attachments. That determination was made pursuant to the Department's statutory authority under the Massachusetts Pole Attachment Statute, G.L. c. 166, § 25A, its regulations under 220 C.M.R. § 45.00 *et seq.,* and its past precedent regarding rates for cable attachments in utility conduit in *Greater Media Cable, Inc*., D.P.U. 91-218 (1992), *affirmed,* 415 Mass. 409 (1993) ("*Greater Media*"). In *Cablevision of Boston*, the Department used fully allocated costs to set Boston Edison's pole attachment rates. *Cablevision of Boston* at 15. The Department established "a method designed to capture the fully-allocated costs of aerial pole attachments which is based on, but not precisely identical to, the federal approach being used by the [Federal Communications Commission ("FCC")]." *Id.* at 18. While recognizing its discretion to depart from the well-established FCC method "when additional costs or adjustments to the federal method are justified on state policy grounds, and are consistent with our goal of relying on publicly available data," the Department also found that "proposed or future changes in the federal formula are not controlling . . . and are not persuasive for the purposes of setting current pole attachment rates." *Id.* at 19.

After careful consideration of pole attachment rate methodologies, the Department has found that its method based upon the FCC approach is consistent with G.L. c. 166, § 25A and related Department regulations. *Id.* at 18. The Department has further found that the FCC

method "simplifies the regulation of pole attachment rates as much as possible by adopting standards that rely upon publicly available FERC Form 1 data." *Id.* at 19. The Department concluded that such a simple and expeditious procedure based on public records would allow the parties to "calculate pole attachment rates as prescribed by the Department without the need for [its] intervention." *Id.*

In *Cablevision of Boston*, the Department resolved specific disputes about the calculation of pole investment, depreciation and the reserve for deferred taxes in deriving the net pole investment to be used in determining Boston Edison's pole attachment rates. *Id*. at 20-30. The Department also resolved issues related to the calculation of carrying charges. *Id.* at 32-39. Finally, the Department resolved issues concerning the amount of usable space to be used in calculating the percentage of pole attachment costs to be allocated to cable operators. The Department accepted the FCC formula's 1 foot per attachment for cable attachment space, and a rebuttable presumption of 13.5 feet for usable space. *Id.* at 40 (citing 2 FCC Rcd at 4390 (1987)).[1] First, the Department accepted the 18 feet as the minimum attachment height for purposes of usable space calculations because it meets the minimum vertical clearance requirements of the National Electric Safety Code. *Id.* at 43. Second, the Department found that Boston Edison had not presented evidence to rebut the FCC's 13.5-foot usable space presumption, in the form of a "statistical analysis or projections using actual pole surveys," that its average usable space was materially different than 13.5 feet. *Id*. at 43-44. Boston Edison had sought to reduce the amount of usable space by excluding pole tops from usable space and

[1] Implicit in this 13.5-foot presumption was the Department's acceptance of the FCC's decisional rule that the 40-inch neutral zone is usable space. *See infra*, Section III.B.

claiming that the average height of its poles with attachments was less than that embedded in the FCC's formula. *Id*. (Exhibit CABLE-19). By adopting the FCC usable space presumption, the Department rejected Boston Edison's showing as to the average height of poles with cable attachments and its claim that pole tops should be excluded from usable space. *Id.* at 44.

In *Cablevision of Boston,* the Department concluded that the decrease in pole attachment rates which it required would have only a minimal impact on Boston Edison and would not require an adjustment to other rates. It further concluded that the reduction in pole attachment fees would have no adverse impact on cable customers and, in fact, might have a beneficial impact. *Id*. at 45-46. This balancing of interests was made by examining pole attachment revenues as a percentage of retail electric service revenues, and by evaluating the even smaller percentage which pole revenues bears to total operating revenues. *Id.*

B. Procedural History

On November 20, 1997, Massachusetts Electric Company ("Massachusetts Electric" or the "Company") notified the Complainants of proposed increases in its pole attachment rates from $9.40 to $15.81 for solely owned poles and from $4.70 to $7.91 for jointly owned poles, effective as of February 1, 1998. (Exhibit CABLE-1 at 9, 10). Each of the Complainants filed written protests against this 59.4% increase in pole attachment rates and designated the New England Cable Television Association, Inc. ("NECTA") as its representative for purposes of conducting rate negotiations with Massachusetts Electric. (Exhibit CABLE-1 at 10). NECTA and Massachusetts Electric continued to negotiate after February 1, 1998, pursuant to a written agreement. On March 20, 1998, they further agreed in writing to extend their negotiation period

until May 15, 1998, approximately one month after the deadline for the Department's decision in the then pending *Cablevision of Boston* case. (Exhibit CABLE-1 at 10).

Even though Massachusetts Electric had a full month to review the *Cablevision of Boston* decision and revise its rate demands and methodologies to conform to that decision, Massachusetts Electric failed to alter its positions in any respect. In particular, Massachusetts Electric's proposed attachment rates ignore the FCC's usable space methodologies expressly adopted by the Department. Instead of adhering to the usable space presumption of 13.5 feet or seeking to rebut that presumption in the prescribed manner by introducing "a statistical analysis or projections using actual pole surveys" showing that its poles with attachments had actual usable space that materially differed from 13.5 feet (*Cablevision of Boston* at 43-44), Massachusetts Electric based the bulk of its proposed increase upon an entirely different usable space formula altogether, one which (1) excludes the 40-inch neutral zone between power and communications lines, and (2) excludes the tops of all poles, which Massachusetts Electric estimates at 5 inches (0.42 feet). (Exhibit MECo-13; Exhibit CABLE-17 at 2). Massachusetts Electric's continued insistence on its usable space methodology even after the Department's adoption of the FCC's methodology also ignored the Department's directive that it would not consider proposed or future changes in the FCC formula in setting current pole attachment rates.[2] *Cablevision of Boston* at 19. Massachusetts Electric's departures from the FCC/Department usable space component of the rate formula**C**along with its use of new accounting procedures

---

[2] The Edison Electric Institute ("EEI"), an electric utility trade association, has been seeking changes through FCC rulemaking requests in the assignment of neutral space as "usable" under the FCC formula. *Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-151, 11 CR 79 (1998); *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, 1997 FCC LEXIS 1315 (March 14, 1997).

and selective inclusion of data in the calculation of various carrying charges**C**produced a proposed pole rate which was nearly 60% greater than the then current rate (Exhibit MECo-19; Exhibit CABLE-1 at 9-10). Accordingly, the filing of a Complaint by affected cable operators could not be avoided.

The Complaint was filed on May 15, 1998. (Exhibit CABLE-3).[3] On May 29, 1998, Massachusetts Electric filed a Response to the Complaint. Following a prehearing conference on June 23, 1998, the Hearing Officer established a procedural schedule and issued hearing ground rules. The Department permitted Boston Edison Company to be a limited participant in this proceeding. *Hearing Officer Ruling on Petition of Boston Edison Company for Leave To Participate as a Limited Participant*, D.T.E. 98-52 (July 21, 1998). Discovery was conducted by the Department and all parties. On July 10, 1998, the Complainants submitted the pre-filed testimony of Paul Glist, the expert who had testified for the cable parties in *Cablevision of Boston.* Mr. Glist presented calculations, based upon the Department's application of the FCC formula in *Cablevision of Boston,* which supported pole attachment rates of $9.08 per solely-owned pole and $4.54 per jointly-owned pole. (Exhibit CABLE-1 at 4, 35 and Exhibit PG-4). On July 17, 1998, Massachusetts Electric submitted the pre-filed testimony of Paul Anundson, David Webster and Allen Clapp. In its pre-filed testimony, the Company sought to support pole attachment rates of $15.84 per solely-owned pole and $7.82 per jointly-owned pole. (Exhibit MECo-13 at 83, Exhibit DMW-1 at 1). Evidentiary hearings were conducted on August 10 and 12, 1998. The parties and the Department designated exhibits for admission into the hearing

[3] A-R Cable Investments, Inc. will be the licensee signatory to agreements which replace those last executed by A-R Cable Services, Inc.

record and the Hearing Officer ruled on these designations on August 14, 1998. During the course of hearings, and even in a post-hearing record response, Massachusetts Electric continued to increase its proposed pole rates to $15.93 per solely-owned pole based upon changes in the underlying data used to support the increase. (MECo Response to CABLE-RR-1).

Pursuant to the procedural schedule, the Complainants submit their Initial Brief in support of their recommendation that the Department determine Massachusetts Electric's pole attachment rates at $9.08 per solely-owned pole and $4.54 per jointly-owned pole, effective February 1, 1998.

II. SUMMARY OF ARGUMENT

In adopting and endorsing the FCC pole attachment formula in *Cablevision of Boston*, the Department has accepted a pole attachment rate formula approach developed by the FCC over the past two decades for determining pole attachment rates pursuant to the general guidelines of Section 224 of the Communications Act. The FCC formula is by far the most widely accepted and applied formula for developing the fully allocated cost of pole rents: it is applied directly by the FCC in 31 states, and generally in many other states that have certified to the FCC and largely adopted the FCC formula. *Cablevision of Boston* at 11. The FCC formula has been widely accepted as striking a reasonable balance of the interests of the cable and utility companies by allocating capital and non-capital costs of a pole according to relative use of the usable pole space. *Id.* at 18, 19.

In reaching its decision in *Cablevision of Boston*, the Department also recognized the significance of incorporating a streamlined procedure and a straightforward approach for determining maximum just and reasonable pole attachment rates. *Cablevision of Boston* at 18,

19. For example, by using publicly-reported data, usually the FERC Form 1 in the case of electric companies, the FCC and Department formula eliminates the need for costly and protracted factual investigations and unnecessary government intervention to determine accounting issues. Similarly, the FCC and Department formula establishes a 13.5-foot usable space presumption, based upon an extensive analysis and re-analysis of the heights of poles which have attachments, minimum ground clearances and other factors. This formula also provides that a cable operator is assigned one foot of that usable space, even though the cable operator's bolt and bracket occupy about 1-1/2 inches of pole space. The usable space presumption of 13.5 feet eliminates the need for utilities to conduct extensive studies of the heights of poles bearing attachments, reduces the complexity of reviewing pole attachment rates and maximizes the opportunity for pole attachment fees to be determined on a self-executing basis, without resort to the administrative complaint process. The soundness of the Department's approach has been demonstrated by the ability of Bell Atlantic to adjust its conduit attachment rates on a periodic basis, consistent with directives in the *Greater Media* decision, for purposes of its price cap compliance filings, without triggering a complaint.

Rather than comply with the well-established parameters of the pole attachment rate formula recently affirmed by the Department, however, Massachusetts Electric here seeks to undermine the certainty and efficiency afforded by the formula by challenging critical components of the formula itself. In particular, Massachusetts Electric has ignored the Department's usable space policy and sought to change that policy entirely. In several other respects, Massachusetts Electric has not followed the guidelines established in *Cablevision of Boston.*

As explained below, the Department should reject Massachusetts Electric's attempt to rewrite the Department's formula. The principle of reasoned consistency in agency decisions compels this conclusion in light of the Department's recent decision in *Cablevision of Boston*. First, the Department should find that Massachusetts Electric's proposed exclusion of the 40-inch neutral zone and the estimated 5-inch pole top conflicts with the *Cablevision of Boston* decision's adoption of the FCC's usable space formula and rejection of Boston Edison's proposed exclusion of 8 inches of pole top space. The Department should accept the 13.5-foot usable space presumption on the ground that Massachusetts Electric has not attempted to rebut that presumption. At most, the Department should find that usable space amounts to 12.82 feet if it wishes to perform calculations, based on statistical evidence of actual pole heights in the record, which Massachusetts Electric could have but did not make, in order to rebut the 13.5-foot usable space presumption.

Second, the Department should find that the Complainants have properly rebutted the presumption that 15% of net pole investment is excluded for appurtenances not useful to attachers and rule that at least 26% of net pole investment be excluded, based upon the detailed Account 364 subaccount investment data presented by Massachusetts Electric. The Department should reject Massachusetts Electric's mistaken argument that the 15% exclusion for appurtenances is not rebuttable.

Third, the Department should find and rule that Massachusetts Electric's proposed FAS 109 adjustment is inconsistent with the formula applied in *Cablevision of Boston* and require Massachusetts Electric to adhere either to that formula or the slight modification accepted by Mr. Glist, consistent with the FCC's formula.

Finally, Complainants have also addressed several minor issues which arose during the course of hearings. Additionally, they have addressed Massachusetts Electric's belated attempt to recast its proposed rates based upon several changes in the pole count data upon which it relied when it gave Complainants notice of a proposed increase on November 20, 1997, when it answered their Complaint on May 29, 1998, during hearings and in record responses.

Complainants' recommended pole attachment rates, $9.08 per solely-owned pole and $4.54 per jointly-owned pole, have been determined consistent with the Massachusetts Pole Attachment Statute and Department precedent (Exhibit CABLE-1). Because these rates are based upon Massachusetts Electric's fully allocated costs, they constitute the maximum lawful rates which the Company may charge and will amply support the interests of electric customers if Massachusetts Electric continues to credit pole attachment revenues to reduce its electric rates. Complainants accept—for purposes of this proceeding—that the above recommended rates would also protect the interests of cable customers by insulating them from the effects of the excessive and unlawful pole attachment fees proposed by Massachusetts Electric.

III. ARGUMENT

A. The Department Should Reaffirm Its Use of the Current FCC Pole Attachment Rate Formula Adopted Several Months Ago in *Cablevision of Boston, Inc., et al.*, D.P.U./D.T.E. 97-82

The Department should reaffirm its adoption of the FCC's pole attachment rate formula as the basis for determining pole attachment rates in Massachusetts. Only several months ago, the Department adopted "a method designed to capture the fully-allocated costs of aerial pole attachments which is based on, but not precisely identical to, the federal approach being used by

the FCC." *Cablevision of Boston* at 18. The reasons for taking this approach were amply stated by the Department in *Cablevision of Boston* and summarized in Section I.A. above, and need not be fully repeated here. *Id.* at 18-19. The FCC's pole attachment rate formula is also "consistent with the Department's earlier decision in *Greater Media*, and more importantly, . . . consistent with the Massachusetts pole attachment statute and regulations." *Cablevision of Boston* at 18. Nonetheless, in the face of this authority, Massachusetts Electric has baldly asserted that the FCC formula "does not apply" in Massachusetts, ignoring the Department's adoption of the FCC formula. (Exhibit CABLE-17). In the interest of maintaining a useful and effective medium for resolving pole attachment rate disputes and in accordance with agency principles of reasoned consistency [*Boston Gas Co. v. Department of Public Utilities*, 367 Mass. 92 (1975)], Complainants request that the Department reaffirm its application of the federal method.

At the same time, the Department should remind pole owners that the Department's approach must be followed and that pole owners cannot ignore the FCC-based components of the Department's established approach on the ground that the FCC formula does not apply in Massachusetts. (See, e.g., Exhibit CABLE-17). If the Department fails to adhere to the approach which it has only recently adopted, it will be issuing an invitation to every electric utility and Bell Atlantic to try its luck with whatever novel approach produces the highest attachment rates, and for the cable industry to propose changes that may reduce attachment rates. Sending that type of signal would contradict the Department's very reasons for adopting the FCC's approach, as articulated by the Department in its *Cablevision of Boston* and *Greater Media* decisions. It would also ensure that the Department is inundated with pole attachment complaint proceedings, as each utility demands pole rate increases based upon its preferred

method. As is evident from *Cablevision of Boston*, and from Massachusetts Electric's deviation from the usable space standards of the FCC and the Department (*see,* Section III.B., *infra*), electric utilities unhappy with the FCC formula already have attempted to persuade the Department to base pole rates upon changes in methodology which the electric utility industry has floated before the FCC. The Department rejected the notion of basing current pole attachment rates upon these types of proposals. *Cablevision of Boston* at 19. In order to assure that pole attachment rates are established through an efficient, orderly, low cost process that facilitates negotiations and minimizes the need for burdensome, costly administrative proceedings, the Department should reaffirm its general acceptance of the FCC's pole attachment methodology. *Cablevision of Boston* at 18, 19.

B. The Department Should Apply the FCC's Usable Space Presumption of 13.5 Feet Or, In the Alternative, Accept a Usable Space Amount of 12.82 Feet

In *Cablevision of Boston*, the Department endorsed the FCC formula and its rebuttable presumption that 13.5 feet of space on a utility pole is usable space. *Cablevision of Boston* at 43-44. Under the FCC and Department standard formula, the maximum pole rate permitted is derived by dividing a pole into "usable" space, defined as all space above minimum grade clearance, and the "nonusable" space. (Exhibit CABLE-1 at 4, 20-21. Tr. 1 at 100-102). The parties are directly assigned a proportion (and cost) of "usable" space based upon their own space needs as a percentage of usable space. The costs of the "nonusable" portion of the pole**C**the ground set and minimum grade clearance**C**are assigned in proportion to the assignment of usable space. (Exhibit CABLE-1 at 4, 20-21).

Supposing a 40-foot pole with a 6-foot ground set and an 18-foot minimum grade clearance, the usable space would be the 40-foot overall length minus the 6-foot ground set and

18-foot minimum grade clearance, leaving 16 feet of "usable space." (Exhibit CABLE-1 at 21). The direct and indirect costs of the pole would be assigned to cable in the ratio of the one foot assigned to cable to the 16 feet of usable space. Implicitly, this methodology assigns all space above minimum grade clearance to "usable space," and assigns pole costs to parties in proportion to the use to which they put the usable space. *Id.*

That assignment is part of the formula itself. Consider, for example, the case of a 35-foot pole:

> On a typical utility pole 35 feet in length there are 11 feet of usable space (that space above minimum grade level clearance used to attach cable, telephone, and electric wires and associated equipment). By what is virtually a uniform practice throughout the United States, cable television is assigned 1 foot out of the 11 feet of usable space. (While cable only physically occupies approximately 1 inch of this space, the clearance space between CATV and the next adjacent pole user is attributed to CATV.) Cable's share of the total capital costs and operating expenses for the entire 35-foot pole would be one-eleventh.

S. REP. NO. 95-580, at 20 (1977), quoted in *Monongahela Power Company, et al., v. Federal Communications Commission*, 655 F.2d 1254 (D.C. Cir. 1981).

The usable space presumption of 13.5 feet adopted by the FCC and accepted by the Department in the *Cablevision of Boston* decision is derived from the simple average of 35-foot poles (with 11 feet of usable space) and 40-foot poles (with 16 feet of usable space). One foot divided by 13.5 is 7.41%. This figure is quite conservative and, if anything, usually *overallocates* usable space to cable operators, because their attachments rarely use a full foot of pole space. *Id.* at 21.

Massachusetts Electric admitted on discovery that it has not followed the FCC/Department usable space approach. (Exhibit CABLE-17 at 2). Instead, Massachusetts Electric departed from the core elements of the usable space component of the Department's pole

attachment rate formula by removing the neutral zone and pole top usable space from its inventory of pole heights.[4] That departure is based upon an entirely different approach which Massachusetts Electric would like the FCC and, in turn, the Department to adopt in place of the current formula. *See* Section I.B. note 2, *supra*. The Department should reaffirm its position in *Cablevision of Boston* that it will not determine current pole attachment rates based upon utility-proposed changes in the FCC formula.

While Massachusetts Electric could have provided a recalculation of usable space based upon a "statistical analysis or projections using actual pole surveys" (*Cablevision of Boston* at 43-44), of the height of its inventory of poles which carry attachments, it chose not to do so. Complainants have demonstrated how the Department could find a usable space measurement of 12.82 feet (or 7.80% use ratio) for Massachusetts Electric poles, if it chose to do Massachusetts Electric's work for it rather than apply the 13.5-foot rebuttable presumption of usable space. (Exhibit CABLE-1 at 26, 27).

1. The Usable Space Presumption of 13.5 Feet, Applied in the *Cablevision Decision*, Is Based Upon Extensive Rulemaking Proceedings and Has Been Reaffirmed Recently By the FCC

The FCC recently reaffirmed the usable space presumption, accepted as part of the pole attachment rate formula adopted by the Department in *Cablevision of Boston*, on February 6, 1998. *Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket 97-151, 11 CR 79 (1998). This recent revalidation of the presumption rests upon over 20 years of investigation and regulatory review by the FCC: FCC reaffirmation of the formula in

[4] Complainants' expert, Mr. Glist, viewed poles and pole attachment practices in Massachusetts Electric's service territory on July 8, 1998. (Tr. 1 at 101).

reconsideration of CC Docket 78-144;[5] then in the *Monongahela Power* case;[6] then again before the Commission in a 1984 rulemaking;[7] and in subsequent litigated cases.[8] The underlying record has been updated regularly, and twice since passage of the 1996 Telecommunications Act in CS Docket 97-98 and CS Docket 97-151. Furthermore, in addition to this Department's ruling in *Cablevision of Boston*, other state commissions have recently upheld and reinforced this approach. For example, in 1997, the 13.5-foot usable space presumption was reaffirmed and applied in Michigan and New York.[9]

2. Massachusetts Electric Company Has Departed from the FCC Usable Space Formula Altogether, and Seeks to Change that Formula Rather Than Rebut the Usable Space Presumption

Massachusetts Electric has admitted that it did not comply with the usable space component of the pole attachment rate formula applied routinely by the FCC and adopted by the Department in *Cablevision of Boston.* (Exhibit CABLE-17 at 2). Nor did the Company attempt to rebut the usable space presumption of 13.5 feet in the manner required by the FCC and the

---

[5] *Rules for the Regulation of Cable Television Pole Attachment*, Mem. Op. and Second Report and Order, 77 F.C.C. 2d 187 (1980).

[6] *Monongahela Power Co., et al. v. FCC*, 655 F.2d 1254 (D.C. Cir. 1981).

[7] *Petition to Adopt Rules Concerning Usable Space On Utility Poles*, 56 R.R.2d 707, 710 (1984).

[8] *General Television of Delaware, Inc. v. Diamond State Telephone and Telegraph Co.*, PA-84-0015, Mimeo No. 2141 (Jan. 28, 1985).

[9] *See, e.g., In the Matter of the Proceeding on Motion of the Commission to Consider Certain Pole Attachment Issues*, N.Y. Pub. Serv. Comm'n. Case No. 95-C-0341 (Issued and effective June 17, 1997); *Consumers Power Co., et al.*, Mich. Pub. Serv. Case Nos. U-10741, U-10816, U-10831 at 27 (Feb. 11, 1997), *reh'g denied* (April 24, 1997) ("*Consumers Power*"). *See also Ohio Edison Co., et al.*, No. 81-1171-EL-AIR (Ohio Pub. Serv. Comm'n Nov. 3, 1982).

Department. (Exhibit 1 CABLE-1 at 25). Apart from Massachusetts Electric's admission that it is not in compliance with the usable space directives of the Department, there is ample evidence demonstrating its non-compliance. The use ratio of 1/13.5 is based upon the assignment of 1 foot of space to a cable attachment (the numerator) and a rebuttable presumption that utility poles with cable attachments are on average 37.5 feet in height. Given an average minimum ground clearance of 18 feet and 6 feet of pole set in the ground, the result is 13.5 feet of usable space (the denominator). The use ratio of 1/13.5 contains within it the determination that usable space is all of the space above minimum grade clearance, reflecting the regulatory classifications which assign the "neutral zone" and pole top space to usable space. In order to rebut the usable space presumption, a party must present statistical evidence of the height of the poles of the utility pole owner which carry attachments.[10] For example, in the recent Michigan case adopting and applying the FCC formula, the Public Service Commission calculated a higher pole height and consequently larger usable space figure of 15.4 feet, inclusive of neutral zone and pole top.[11] "Under the FCC presumption, the attaching party's allocation factor is 1/13.5, or 7.41%. If the MCTA's Michigan-specific estimate of usable feet is used, the allocation factor becomes 1/15.4, or 6.49%," which was adopted by the Public Service Commission. (Exhibit CABLE-1 at 25-27).[12]

Instead of presenting evidence that its poles carrying cable attachments are different in average height than that presumed by the FCC's pole rate formula and therefore produce a

---

[10] *See Nevada State Cable Television Association v. Nevada Bell,* file No. PA-96-001 at 9-13 (June 18, 1998).

[11] *Consumers Power* at 26-27.

[12] *Consumers Power* at 12.

different usable space amount, Massachusetts Electric has departed from the formula and removed the 40-inch neutral zone and pole top space (estimated at 5 inches) from the usable space amount on a pole. (Exhibit CABLE-17 at 2). Rather than rebutting the usable space presumption based on "statistical evidence of actual pole heights" (*Cablevision of Boston* at 43-44), Massachusetts Electric has tried to fundamentally ***change*** the FCC and *Cablevision of Boston* formula. Following Massachusetts Electric's arguments, the carrying costs of a 37.5-foot pole would be allocated 1/9 to cable, rather than 1/13.5. This effectively would change the formula itself to allocate 50% more costs to cable on a pole jointly owned by Massachusetts Electric and Bell Atlantic than on a pole jointly owned by Boston Edison and Bell Atlantic. In support of this requested radical change, Massachusetts Electric has offered up nothing about the heights of poles it sets which distinguish them in such a fundamental way from the typical pole used by others in the utility business. Indeed, to the contrary, the record demonstrates that Complainants' attachments to Massachusetts Electric are placed on the very same 35- and 40-foot poles that support the FCC's usable space presumption. (Exhibit MECo-13, DMW-1 at 3). Moreover, neither Mr. Glist nor Massachusetts Electric witness Mr. Webster disputed minimum ground clearance of 18 feet and the pole set footage, which are consistent with the FCC/Department usable space approach. (Exhibit CABLE-1, PG-4; Exhibit MECo-13, DMW-2 at 4). As a result, the Department must find and rule that Massachusetts Electric's exclusions of the neutral zone and pole tops conflict with the usable space approach which it adopted in *Cablevision of Boston* and do not constitute the manner in which a usable space presumption is

rebutted under the FCC/Department methodology. The Department should reject these usable space exclusions, just as the FCC routinely rejects such showings under the FCC formula.[13]

If Massachusetts Electric were right and the treatment of neutral zone and pole top space as usable space were rebuttable, then there would be no usable space formula in Massachusetts, and each pole case will be bound for hearing rather than for the expeditious resolution which the *Cablevision of Boston* decision held in promise. The Department has modeled its conduit and pole rate methodologies in the *Greater Media* and *Cablevision of Boston* cases on the FCC approach. This case presents the Department with an opportunity to reaffirm its reliance upon the FCC approach and apply, as in *Cablevision of Boston*, a pole attachment rate formula which is based upon the simplicity, fairness, administrative convenience and settled body of interpretive law which makes its approach so desirable. The principle of reasoned consistency in agency decisions supports the application of *Cablevision of Boston* in this case.

As further explained below, Massachusetts Electric's rationale for departure from the FCC/Department usable space component of the pole attachment rate formula merely repeats old arguments which previously have been rejected by the FCC and this Department.

a. The Department Should Not Change its Application of the FCC Formula With Regard to the Neutral Zone in This Proceeding

The Department's decision in *Cablevision of Boston* assigned the neutral zone to usable space on the pole, arriving at the 13.5-foot presumption consistent with the FCC formula. *Cablevision of Boston* at 40-44. Massachusetts Electric has failed to identify any supportable

---

[13] *See, e.g., General Television of Delaware, Inc. v. Diamond State Telephone and Telegraph Co.*, PA-84-0015, Mimeo No. 2141 (Jan. 28, 1985); *El Paso Cablevision, Inc. v. Mountain States Telephone & Telegraph Co*., 49 R.R.2d 847 (1981).

reasons why the Department should not follow that assignment in this, and in any future, proceeding. To the contrary, assignment of the neutral zone to usable space is amply supported by legal and factual grounds.

With respect to legal grounds, in addition to the FCC and Department precedent cited above, assignment of the neutral zone to usable space under the *Cablevision of Boston* decision is compelled by the Massachusetts Pole Attachment Statute and the Department's regulations. G.L. c. 166, § 25A (1998); 220 C.M.R. §§ 45.00 *et seq*. Under those Massachusetts provisions, usable space includes "the total space which would be available for attachments . . . upon a pole above the lowest permissible point of attachment of a wire or cable." *Id*. Under controlling safety codes, such as the NESC, parties may attach facilities at 18 feet on Massachusetts Electric poles. (Exhibit CABLE-1 at 20-21; Exhibit CABLE-17). Under Massachusetts law, "usable space" is any space above 18 feet on a pole available for "attachments." The Massachusetts pole statute specifically defines "attachments" as including "wires and cables" as well as "**any related device, apparatus, appliance or equipment installed upon any pole.**" *Id*. The FCC, among other tribunals, has specifically held that streetlights are among the items of "equipment" which makes space usable: "Clearly, streetlight brackets, transformers, and the like are 'associated equipment' within the meaning of this provision."[14] In light of Massachusetts Electric's own admission that it places "attachments" such as streetlights, floodlights and traffic signals in the

[14] *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 77 FCC 2d 187, 191 (1980). The federal Act defines "usable space" as space "above minimum grade level which can be used for the attachment of wires, cable, and associated equipment." Therefore, the Massachusetts statutory definition of "attachment" would also include pole top pins and extenders, which, in turn, supports the treatment of pole top as usable space. *See* Section III.B.2.d., *infra*.

neutral zone on its poles (Exhibit CABLE-9; Tr. 1 at 99-101; Tr. 2 at 42), this space clearly is "usable" under the statutory terms controlling in Massachusetts.[15]

With respect to factual grounds, the evidence presented in this case underlying Massachusetts Electric's use of its utility poles supports assignment of the neutral zone as usable space.

First, Massachusetts Electric uses the "neutral zone" in actual practice. Indeed, Massachusetts Electric's information responses and daily practice reveal several revenue-producing uses of the neutral space, demonstrating that the neutral zone is not "dead space" unusable for any other purpose. (Tr. 2 at 42, 43). The neutral zone can be, and is, used by Massachusetts Electric for street light attachments, from which Massachusetts Electric derives additional revenues. (Exhibit CABLE-1 at 25; Tr. 2 at 42-43). Massachusetts Electric also uses the neutral zone for other revenue-producing means, including floodlights and traffic signals. (Exhibit CABLE-9). The revenues derived from these uses surpass the revenue generated from pole attachment fees paid by cable operators. (Tr. 2 at 43; Exhibit MECo-5 at 304, line 35, column C). Finally, Massachusetts Electric places risers in the neutral zone to accommodate its own service facilities. (Tr. 1 at 58).

Second, contrary to the claims of Massachusetts Electric, the neutral zone does not exist on poles used solely for cable or for cable and telephone. A critical reason for the existence of the neutral zone is for electrical attachments which must maintain a prescribed distance from all

---

[15] While Massachusetts Electric took great pains to demonstrate it does not charge cable operators for their power supplies and associated equipment that extend vertically into the neutral space (Tr. 2 at 55-56), that exercise further served to illustrate that the neutral zone is, in fact, used and should be included in usable space (Tr. 1. at 82-84; Tr. 2 at 55-56).

conductors of differing voltages and applications. Pole space used by a power company to maintain prescribed clearances between primary and secondary conductors on the pole is "used" by the power company for the unique attribute of ***its*** core services. Just as the separation space among electrical operators on the pole is deemed to belong to electric, so too must the neutral zone; it is used to separate electric facilities from conductors of differing voltages and applications. (Exhibit CABLE-1 at 24). Additionally, as Massachusetts Electric's witness Mr. Clapp was forced to concede, and as the *NESC Handbook* (authored by Mr. Clapp) confirms, the neutral zone provides leg room for electric utility employees working on electric facilities on poles. (Tr. 1 at 120; Exhibit CABLE-2 at 293, 294). Moreover, as again confirmed by the *NESC Handbook*, the neutral zone creates additional clearance for electric conductors carrying ice loads, clearance that would not be present if the neutral zone where not in place. (Exhibit CABLE-2 at 293, 294).

Finally, the neutral zone provides vertical space required by electric companies to maintain their own minimum clearances above grade. (Exhibit CABLE-1 at 24, 25). *See, e.g., Consumers Power* at 26.

All of this was confirmed by Mr. Glist's personal inspection of Massachusetts Electric poles and pole attachment practices in Massachusetts Electric's service territory on July 8, 1998. (Tr.1 at 101).

b. Massachusetts Electric's Proposal Also Ignores Every Policy Reason for the Formula's Usable Space Approach

One cannot ignore that the assignment of the neutral zone to usable space is also part of the overall effort of the FCC formula to account for the context of pole attachments, in which cable operators are making proportionately little use of surplus utility property, and are footing the bill to create attachment space wherever it is not available.

First, the space used on poles is pure surplus: under the joint use contracts, license contracts, and engineering standards under which poles are used, Massachusetts Electric lines are always at the top of the pole, and Bell Atlantic lines are always at the bottom. (Exhibit MECo-24). The height of the poles already has been determined, as a necessary component in the delivery of Massachusetts Electric and Bell Atlantic utility services, and the cost of those poles already has been incurred to deliver those services. Other attaching parties, such as cable operators, connect to surplus pole space located between these lines, or pay separate fees to create such space. (Exhibit CABLE-1 at 27).

Second, Massachusetts Electric collects all costs which are caused by cable operators up front, in advance, at the time of attachment, before it even assesses the pole attachment fees at issue in this case. (Exhibit CABLE-1 at 28). Massachusetts Electric recovers these costs in the form of non-recurring "makeready" assessments. If a cable television attachment would cause any costs to pole owners, such as the need for rearranging lines to maintain adequate clearance between lines, those costs are paid directly by the attaching party at time of initial attachment. If for any reason the pole is of insufficient height to accommodate the attaching party, that attaching party pays to replace the pole with a taller pole. The pole remains the property of the utility and the attaching party pays the annual pole attachment fee. Thus, all costs which are

caused by the attaching party are directly paid up front by that attaching party, outside of the annual rental. (Exhibit CABLE-1 at 28).

Third, aerial cable television facilities occupy the least amount of pole space, are by far the lightest conductors on the pole as compared to power and telephone facilities, and do not change the characteristics of the pole to which they attach. (Exhibit CABLE-1 at 28). Moreover, cable operators also attach the fewest facilities to the pole. By contrast, there are typically multiple electric conductors attached to the pole, plus transformer facilities, cross arms, guys and other apparatus attached to the pole exclusively for the benefit of the power company. Thus, while cable has accepted responsibility for one foot of a pole's usable space, it occupies considerably less and places much less of a burden on poles than do telephone and electric conductors. (Exhibit CABLE-1 at 28). As the Michigan Public Service Commission stated in rejecting the classification of the neutral zone and pole top as unusable: "The Commission finds that usable space is a more reasonable approach to allocation than those proposed by the utilities because it achieves a better approximation of the benefit that each user of a pole receives relative to the other users." *Consumers Power* at 25.

Fourth, cable operators are afforded clearly inferior and subordinate rights in their attachments, as compared with pole owners and joint users. (Exhibit CABLE-1 at 28, 29). For example, the cable television operator has no definite right to any space on the pole; must pay to make poles ready for attachment; must be licensed pole by pole; and generally may be displaced if the utility pole owner decides that it needs the space. By contrast, utilities provide each other with a standard pole or normal pole with sufficient height, strength and space to accommodate the joint use of the pole by both utilities. Massachusetts Electric's pole attachment agreement

forces onto cable extraordinarily large, virtually limitless liability in connection with the very limited pole attachment license it is granted. (Exhibit CABLE-3 at Exhibit 2 art. XIII). Massachusetts Electric's cable agreement also forces the cable operator to fully indemnify the power company for activities associated with the cable television pole attachments. *Id*. By contrast, a joint use agreement will typically set forth a reasonable and equitable division of liabilities in particular circumstances. For example, most joint use agreements provide that each party is responsible for injuries caused solely by that party's actions, and that each party will pay for damages to its property and injuries to its employees when caused by the concurrent negligence of both parties. (Exhibit CABLE-1 at 28, 29).

These are some of the broader factual and policy considerations which also entered into the FCC's adoption of the use ratio of 1/13.5, within which is the determination that usable space is all of the space above minimum grade clearance. (Exhibit CABLE-1 at 29). All of these factual and policy considerations are present in this case and further support the Department's continued reliance upon the usable space approach taken in the *Cablevision of Boston* decision.

c. Massachusetts Electric's Theory that Cable has Chosen to Build in a Separate Communications Zone is Fiction

Massachusetts Electric has claimed that the placement of cable attachments in a separate communications zone was an affirmative "choice" by cable operators which resulted in the "creation" of the 40-inch neutral zone, and, therefore, justifies treatment of the neutral zone as non-usable space. Massachusetts Electric has further implied that the neutral zone would not exist, but for cable, and that because cable selected communications space for its attachments based on economic considerations, Massachusetts Electric has been forced to have a neutral zone on its poles. (Exhibit MECo-13 at 5).

In fact, the communications space and neutral zone preceded the existence of cable attachments and cable operators have never been afforded any choice whether to locate in the communications space on Massachusetts Electric's poles. (Tr. 1 at 109). The establishment of a separate communications zone was an historic choice made by electric utilities and their telephone joint owners/users, dating back decades, before the existence of cable. (Exhibit CABLE-1 at 27; Exhibit MECo-13; Tr. 1 at 111). Better than 90% of cable attachments are on poles owned jointly by Massachusetts Electric and Bell Atlantic (Exhibit MECo-13 at 13), in which those parties' joint ownership agreements have prescribed a separate communications space. (Exhibit DTE-19, MECo Response to CABLE-1, art.9). This assignment is still a matter of contract and Code. The Massachusetts Electric/Bell Atlantic joint pole agreement continues to require it. The NESC today continues to require it, and will not be up for revision until 2007, at best, according to Massachusetts Electric's own NESC expert Mr. Clapp. (Tr. 1 at 114-115). The BellCore Blue Book, incorporated in pole agreements and local cable license agreements, also requires it. (Tr. 1 at 97). This historical and continuing requirement cannot be undone by Massachusetts Electric fiat or its fanciful spin doctoring.

Under the standard pole license agreements, cable operators are told by the pole owners where to attach. (Tr. 1 at 97). The "three way" agreements with Bell Atlantic specifically require the placement of cable in the communications zone.[16] (Tr. 1 at 97). The newer "two way" agreements with Massachusetts Electric give the Company the power to tell cable exactly

[16] All but two pole attachment agreements between Complainants and Massachusetts Electric are "three way" agreements. (Tr. 1 at 73-74).

where to go on the pole. (Tr. 2 at 65-69). As a result, every single cable attachment by Complainants is in the communications zone in Massachusetts. (Tr. 1 at 97; Tr. 2 at 45-46).

Prior to 1993, the use of power supply space was not even an option under the NESC. (Tr. 1 at 113-115; Tr. 2 at 44-45). Since 1993, it has not been an option under Massachusetts Electric's or Bell Atlantic's standard practices. (Tr. 2 at 45-46). Even under Massachusetts Electric's new "policy" (promulgated after the *Cablevision of Boston* decision), which allows the Company to construct fiber optic cable for the use by others in the power supply space on its poles (Exhibit CABLE-11), the placement of cable television distribution plant outside of the communications zone and in power supply space is prohibited.[17] (Tr. 1 at 115-117). This new policy, which Mr. Anundson testified was under development for over one year (Tr. 2 at 57, 58), clearly was not designed to give cable operators the option of attaching their coaxial cable or hybrid fiber coaxial plant in the power supply space**C**such technologies are excluded from the power supply space under the Massachusetts Electric policy. (Exhibit CABLE-11, Attachment at 1; Tr. 2 at 47-48). Nor is it clear that Bell Atlantic would permit cable attachments in power supply space on jointly-owned poles. In any event, Massachusetts Electric's new policy would not provide any real benefit to cable operators because they generally expand plant capacity by placing facilities on existing strand. (Tr. 1 at 66).

Massachusetts Electric has also argued that cable operators have derived an economic advantage by utilizing the communications space because they are able to use different personnel than the Company uses. (Exhibit MECo-13 at 9). However, the record does not support these

---

[17] Indeed, even if Massachusetts Electric were to allow cable attachments outside of the communications zone, the reality of pole attachment practices is that attaching parties cannot simply locate their facilities at different heights on a pole-to-pole basis. (Tr. 1 at 97-98).

arguments. First, Massachusetts Electric has not addressed that cable attachers had no choice in the matter and were located in the communications space by the pole owners**C**the Company itself and Bell Atlantic. Second, Massachusetts Electric has neither quantified this alleged economic benefit nor measured such alleged economic benefit against the historical and ongoing burdens of makeready which the cable industry has absorbed since the time that cable networks were first constructed.

Contrary to Massachusetts Electric's claims, the evidence demonstrates that cable has never had a choice between communications space and power supply space. Accordingly, it would be factually incorrect to attribute the existence of the neutral zone to cable attachers and eliminate the neutral zone from usable space. Nor is the assignment of the neutral zone to attachers warranted on the record on the basis that they have derived economic benefit from being forced by pole owners to utilize communications space on the poles and pay decades of makeready.

d. Pole Tops Are Treated as Usable Space Under the FCC and DTE Formula

Massachusetts Electric incorrectly has excluded from usable space the top five inches (0.42 feet) of each pole. (Exhibit MECo-13 at 14-15; Exhibit CABLE-17 at 2). Pole top space is included in usable space under the rate formula adopted by the FCC and applied recently by the Department in *Cablevision of Boston,* in which the Department rejected Boston Edison's proposed exclusion of eight inches of pole top space. (Exhibit CABLE-1 at 22-23; Exhibit CABLE-19; Tr. 1 at 102). Massachusetts Electric's position has been repeatedly rejected by the FCC in light of evidence that utilities use pole top extenders and pole top pins to make the pole

top usable.[18] Just last year, the New York Public Service Commission rejected similar arguments by electric utilities.[19] This is another instance in which Massachusetts Electric has admitted to not following the FCC/Department usable space directives (Exhibit CABLE-17 at 2), failed to rebut the usable space presumption and, in fact, tried to overturn the usable space component of FCC/Department pole attachment rate formula.

e. The Department Should Not Change its Application of the FCC Formula With Regard to Pole Tops in This Proceeding

Despite vigorous contentions by Boston Edison that the pole top should be treated as unusable (Exhibit CABLE-19), the Department decided in *Cablevision of Boston* to adopt the 13.5-foot usable space presumption consistent with the FCC formula. *Cablevision of Boston* at 40-44. Massachusetts Electric has failed to identify any supportable reasons why the Department should not follow that assignment in this, and in any future, proceeding. Principles of reasoned consistency compel the continued inclusion of pole tops within usable space.

As with the neutral zone discussed above, assignment of pole top space to usable space under the *Cablevision of Boston* decision is entirely consistent with the Massachusetts Pole Attachment Statute and the Department's regulations. *See* G.L. c. 166, § 25A (1998). Under

---

[18] *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket 78-144, 68 F.C.C.2d 1585 (1978) (First Report and Order); 72 F.C.C.2d 59 (1979) (Memorandum Opinion and Second Report and Order); 77 F.C.C.2d 187 (1980) (Memorandum Opinion and Order); *Teleprompter Corp. v. Florida Power & Light Co*., 49 R.R.2d 1484 (1981), *review denied*, 54 R.R.2d 1391 (1983); *Alert Cable TV of North Carolina v. Carolina Telephone & Telegraph Co.*, PA-79-0028, Mimeo No. 002015 (July 15, 1981); *American Television & Communications Corp. v. Carolina Power & Light Co.*, PA-80-0013, Mimeo No. 002011 (July 17, 1981).

[19] *In the Matter of the Proceeding on Motion of the Commission to Consider Certain Pole Attachment Issues,* N.Y. Pub. Serv. Comm'n Case No. 95-C-0341 (Issued and effective June 17, 1997).

Section 25A, usable space includes "the total space which would be available for attachments . . . upon a pole above the lowest permissible point of attachment of a wire or cable." The definition of "attachment" in Section 25A includes pole top pins and extenders, thereby supporting the Department's treatment of pole top space as usable. Indeed, the evidence supplied by Massachusetts Electric in discovery demonstrates that it places pole top pins and pole top extenders on the top of its poles and makes use of space above pole tops for its own attachments. In discovery and through its expert, Mr. Clapp, Massachusetts Electric has admitted that it makes use of pole top extenders to place wires above the top of poles, thereby making better use of the usable space. (Tr. 1 at 67; Tr. 1 at 133-136). Its Construction Manual is replete with illustrations showing their use. (Exhibit CABLE-1 at 22 and PG-5). Its Account 364 includes an over $9 million investment in pole top pins or brackets, and pole top extenders. (Exhibit MECo-13 at 155, DMW-1 at 6). Not only has Massachusetts Electric demonstrated that it uses pole top pins and extenders, it has shown that such use is of significant benefit to the Company. Indeed, Massachusetts Electric's use of pole top pins and extenders creates additional height above grade for its conductors (Tr. 1 at 69-70, 134-136), which, in turn, facilitates Massachusetts Electric compliance with safety code requirements mandating adequate clearance between primary and secondary conductors. (Tr. 1 at 135-136). Based upon the record, the top five inches (0.42 feet) of Massachusetts Electric's poles should be deemed usable. The same factual basis which led the FCC and other state commissions to include pole tops within usable space exists here, just as it did in the *Cablevision of Boston* case.

f. Massachusetts Electric's Arguments for Exclusion of Pole Tops From Usable Space are Without Merit and Would Defeat the Department's Goal of a Self-Executing Rate Formula

If the Department were to accept the theory animating Massachusetts Electric's argument to eliminate five inches of pole top space from usable space, the same logic necessarily would require the Department to reduce the allocation ratio used to determine a cable operator's costs for attaching to a utility pole. Massachusetts Electric attaches brackets and through-bolts five to six inches below the pole top to attach pole top extenders and pole top pins on its poles. (Exhibit MECo-13 at 14-15, 50-51). Massachusetts Electric claims, however, that the five inches above these brackets is not usable because Massachusetts Electric does not attach brackets or through-bolts at that height due to problems with wood splitting. *Id.* Following Massachusetts Electric's reasoning, cable operator attachments should only be deemed to "use" 1-1/2 inches of space on a pole**C**rather than 12 inches**C**because the bracket necessary to support cable facilities only occupies 1-1/2 inches of pole space. The remaining 10-1/2 inches is not used by cable television attachments and the costs for that space should not specifically be assigned to the cable operator. A consistent application of this "actual use" theory would result in a use ratio of 1-1/2 inches/9 feet (1.39%) for cable attachments, which is far less than the Department's accepted allocation ratio of 1 foot/13.5 feet (7.41%). While such a result would be consistent with Massachusetts Electric's reasoning, it would contradict the regulatory assignments already investigated and endorsed by the FCC and this Department.

Further, if the Department followed Massachusetts Electric's reasoning, it would (1) ensure that the evaluation pole attachment rate increase notices is complicated by subjective factual issues; (2) increase the incidence of complaint filings; and (3) undermine the

Department's goal of determining pole attachment rates on the basis of publicly reported data. As illustrated already by the claims of Boston Edison and Massachusetts Electric, different utilities may claim that a different amount of pole top space should be excluded from usable space. Forcing cable attachers and facilities-based competitive local exchange carriers into a morass of fact finding in order to obtain reasonable pole attachment fees would be contrary to the efficient approach employed by the FCC and adopted by the Department, and would, in turn, force cable operators and other attachers to advance new theories of their own in order to offset increases caused by utility departures from the application of an established, predictable rate formula.

3. At Most, the Record Supports a Slight Reduction in Usable Space

Massachusetts Electric has failed to meet its burden and rebut the usable space presumption in the formula that was accepted by the Department in *Cablevision of Boston*. Massachusetts Electric has offered no "statistical evidence" distinguishing its poles from the typical pole used by others in the utility business that would suggest the 13.5-foot presumption should not apply. Instead, Massachusetts Electric's pole arrangements**C***e.g.*, use of pole top pins and extenders; prohibiting parties from attaching facilities within the neutral zone, while using the neutral zone for the attachment of revenue-producing streetlights, flood lights and traffic signals**C**are exactly the kinds of arrangements which led the FCC and state public service commissions to adopt the FCC formula and assign the neutral space and pole top to usable space.

At best, the record could support a slight reduction in usable space on Massachusetts Electric's poles from 13.5 feet to 12.82 feet. Based on the discovery and data request responses supplied by Massachusetts Electric during this proceeding, Massachusetts Electric's actual

inventory of pole heights for poles with cable attachments shows that such Massachusetts Electric poles have an average height of 36.47 feet. (Exhibit CABLE-6; MECo Response at 108; Exhibit CABLE-1 at Exhibit PG-4). As explained above, if the Department wished to do Massachusetts Electric's work for it, it could incorporate this pole height data, treat the pole top and neutral zone variables as usable space to conform to the accepted FCC and Department formula, and produce a usable space figure on Massachusetts Electric poles of 12.82 feet. (Exhibit CABLE-1 at 26, 27). Massachusetts Electric, of course, has failed to sponsor such a calculation, preferring to advance a direct assault on the formula itself.

4. Conclusion

The FCC and this Department have determined that the neutral zone and pole top space are indeed used by utility pole owners, and, therefore, has "hard-wired" these amounts into its pole attachment rate formula as usable space. Allowing utility pole owners, such as Massachusetts Electric, to repeatedly ignore these requirements each time they seek to change pole attachment rates and challenge these amassed findings and requirements at rate proceedings destroys the intended benefits of predictability, administrative ease and low cost of the FCC and *Cablevision of Boston* formula. Such a departure from the settled formula conventions would create an opportunity for utility pole owners to contend from case to case, for example, that varying portions of pole top space are not usable; while Massachusetts Electric claims that 5 inches of pole top are not usable in this proceeding, Boston Edison claimed that 8 inches were not usable in the *Cablevision of Boston* decision. (Exhibit CABLE-19). Similarly, one Massachusetts Electric witness, Mr. Clapp, testified that neutral zone space actually should be 48 inches rather than the 40 inches specified by the NESC and built into the FCC and

Department formula. (Exhibit MECo-13 at 37). Yet, Massachusetts Electric witness Mr. Webster excluded a 40-inch neutral zone. (Exhibit MECo-13 at 78). Moreover, Massachusetts Electric also argued that cable operators use more than 12 inches of space on a pole (Tr. 1 at 71-72), directly contradicting the well-established assignment of one foot of space to cable operators set forth in the FCC and Department formula. Based upon these facts, there is good reason for the Department to find that if it strays from the usable space approach which the FCC has applied for years and which it has just adopted, other utilities will seek pole attachment rate increases (and cable will seek offsetting decreases) based upon departures from the currently established rate formula. The end result will be no formula at all.

C. Massachusetts Electric's Accounting Records Demonstrate That At Least 26% of Its Claimed Pole Investment Should Be Excluded As "Appurtenances" That Are Not Useful for Pole Attachments

Based upon the Account 364 subaccount investment amounts provided by Massachusetts Electric (Exhibit MECo-13 at 155, DMW-1 at 6), Massachusetts Electric has removed too little of its net investment in its pole plant to account for "appurtenances." Appurtenances are those items on utility poles, such as cross-arms, which are booked into Account 364 but from which cable operators derive no benefit and are not useful for pole attachments.[20] (Exhibit CABLE-1 at 13, 14). As a result, Massachusetts Electric has overstated the pole attachment rate charged to the Complainants and other attaching parties, such as competitive local exchange carriers.

Under the FCC formula, as adopted by the Department in *Cablevision of Boston*, there is a rebuttable presumption that utility pole owners should exclude 15% of their net pole

[20] 77 F.C.C. 2d 187 at n. 18 (1980) (Memorandum Opinion and Order).

investment to account for appurtenances that do not benefit attaching parties.[21] (Exhibit CABLE-26). Just as the FCC's usable space presumption may be adjusted to account for a universe of shorter than average poles, the 15% appurtenance reduction is a presumption which may be adjusted to reflect actual appurtenance investment data. As the FCC explained in adopting the current codification of the rules: "These ratios [presuming 5% for telephone and 15% for power] shall be rebuttable presumptions to be utilized in the event no party chooses to present probative, direct evidence on the actual investment in non-pole-related appurtenances." *Amendment of Rules and Policies*, CC Docket 87-209, 2 FCC Rcd. 4387 ¶ 19 (1987). For example, in a case involving the Public Service Company of New Hampshire and New England Telephone, based upon direct evidence on the actual investment in pole appurtenances, the FCC used a figure of 65.54% of Account 364 to represent bare poles, thus, determining that 34.46% constituted excludable appurtenances.[22]

Massachusetts Electric erroneously claims that 15%, and only 15%, may be used as the portion of Account 364 investment attributable to excludable appurtenances. (Exhibit CABLE-1 at 13; Exhibit MECO-13 at 63, 68). While a 15% reduction would comport with the FCC's default percentage for pole appurtenances for electric utilities in the absence of the detailed Account 364 subaccount data on actual investment in pole appurtenances, the record in this case

---

[21] In *Cablevision of Boston*, the 15% appurtenance figure was used because Boston Edison would not provide data sufficient to allow cable operators in that proceeding to produce an alternate appurtenance figure. (*Cablevision of Boston*, BECo Response to CABLE 1-5, CABLE 1-10 and Cable 1-11).

[22] *Teleprompter Corp. v. New England Telephone & Telegraph Co. and Public Service Co. of New Hampshire*, PA-79-0044, Mimeo No. 002016 (July 14, 1981).

contains this very detailed Account 364 subaccount investment information. The Account 364 itemization provided by Massachusetts Electric shows investments broken down by poles, by height, distinguishing sole from joint ownership, and the amount of investment for each of the various types of appurtenances. (Exhibit MECo-13 at 155, DMW-1 at 6), and provides sufficient information for Complainants to calculate an actual appurtenance investment percentage in place of the presumed 15% amount.

The FCC has acknowledged two methods for calculating appurtenance figures to rebut the presumed 15% appurtenance level. (Tr. 1 at 14). The first FCC-accepted method adds investment in guys and anchors to the investment in bare poles to reach a total figure for pole investment (unless cable operators supply their own guys and anchors, in which case they are not included in this investment amount).[23] (Tr. 1 at 15, 18, 92-94). The remaining investment in Account 364 is excluded as nonusable appurtenances. Completed construction not classified is excluded entirely as a trade off for the inclusion of all guys and anchors. (Tr. 1 at 15, 18, 92-94). In his analysis of Massachusetts Electric's pole investment and appurtenance claims,[24] Mr. Glist elected to use the above-described conservative approach and treated all guys and anchors as part of "pole" investment, even though cable operators install their own guys to offset their

---

[23] *See, e.g., Teleprompter Corp. v. New England Telephone & Telegraph Co. and Public Service Co. of New Hampshire.,* 56 R.R. 2d. 298 (1984).

[24] In his evaluation of Massachusetts Electric's appurtenance calculations, Complainants' expert, Mr. Glist, divided the investments between "poles" and "appurtenances." (Exhibit CABLE-1 at Exhibit PG-4). Reviewing Massachusetts Electric's construction standards and manual, Mr. Glist isolated crossarms, pole arms, transformer cluster mounts, secondary racks, pole top pins and pole top extenders, which are used for electrical lines only. Mr. Glist also excluded fences and concrete associated with substation construction, and used in serving electrical customers, not for providing third party attachments.

own line load. (Exhibit CABLE-1 at 13, 14). The actual amount of poles, guys and anchors in Account 364 is approximately 74%, with corresponding excludable appurtenance investment data of approximately 26%. (Exhibit CABLE-1 at Exhibit PG-4; Tr. 1 at 94).

Under an alternative methodology, the FCC determines excludable appurtenances by including in pole investment only bare poles (no guys and anchors), plus a ratable share of Account 106 completed construction not classified, on the assumption that Account 106 includes the same percentage of bare pole investment as does the classified portion of Account 364 investment (Tr. 1 at 14-15, 92-94). The remainder of Accounts 364 and 106 are excluded as appurtenances. Using this alternative FCC methodology, Mr. Glist determined an excludable appurtenance figure of 40%. (Tr. 1 at 14, 15, 18-20, 92-94). [25]

During his cross-examination of Mr. Glist, counsel for Massachusetts Electric incorrectly suggested that the Department should ignore both of the above-described, accepted FCC methodologies for calculating appurtenance adjustments and instead combine the two methodologies described above, giving Massachusetts Electric the undue benefit of (1) including in pole investment all pre-existing utility guys and anchors, as if used by cable operators**C**which is contrary to the record (Tr. 1 at 25-27)**C*and*** (2) a ratable share of completed construction not classified. (Tr. 1 at 14-29). There is no precedent nor any evidentiary basis for such an appurtenance calculation. Nor did Massachusetts Electric rely upon this anomalous theory in its direct case. Had Massachusetts Electric attempted to estimate the number of instances where cable operators rely exclusively on pre-existing utility guys and anchors, there might have been a

[25] *Teleprompter Corp. v. New England Telephone & Telegraph Co. and Public Service Co. of New Hampshire*, PA-79-0044, Mimeo No. 002016 (July 14, 1981).

basis in the record for adding a percentage of guys and anchors and a percentage of completed construction not classified in determining the appurtenances adjustment (although the FCC methodologies are designed to eliminate the need for such a burdensome exercise). But the Company failed to provide the data necessary to perform such a calculation. Given this state of affairs, it should be evident to the Department that Massachusetts Electric lacked an understanding of the FCC's appurtenance adjustment methodology and was merely trying to return by the back door to its erroneous original claim that a 15% adjustment for appurtenances was irrebutable.

Given this factual record, the Department should find and rule that the 15% default percentage for appurtenances has been rebutted by the Complainants under the formula approach in *Cablevision of Boston*. The Department should adopt Mr. Glist's recommendation that the Department evaluate Massachusetts Electric's accounting of pole plant investment and adjust for appurtenances based detailed Account 364 subaccount data, with the inclusion of guys and anchors in pole investment and the exclusion of Account 106 completed construction not classified, the more conservative of the FCC's alternative methodologies. Under Mr. Glist's application of this FCC methodology, at least 26% of Massachusetts Electric's pole plant investment consists of excludable appurtenances, and is the appropriate percentage exclusion from Account 364 net pole investment in order to remove non-pole-related appurtenances. Using this 26% figure to calculate net pole investment results in the removal of $39 million in net appurtenances from net Account 364 investment. (Exhibit CABLE-1 at 14).

D. Complainants Do Not Contest Massachusetts Electric's Pole Count Provided in Its Response, But Oppose Subsequent Changes in That Pole Count

Massachusetts Electric has changed its pole count throughout this proceeding, which directly impacts the determination of its net pole investment. Under the standard approach, the net investment is calculated by spreading the aggregate net investment in all distribution poles (Account 364) across all distribution pole units. In a pre-Complaint data submission, the Company provided a pole count to Complainants. (Exhibit CABLE-1 at 14). Complainants' original calculation attached to the Complaint used that figure of 339,526 pole equivalents, which appeared to be the total number of pole units in Massachusetts Electric's continuing property records. In its Response, however, Massachusetts Electric changed that equivalent pole count, claiming that it mistakenly had included leased poles and possibly empty locations in that number. (Exhibit CABLE-1 at 14, 15; Exhibit MECo-6). Complainants' expert, Mr. Glist, performed his pole attachment rate calculations in his direct testimony based on the corrected pole count of 335,486 provided by Massachusetts Electric in its Response. (Exhibit CABLE-1 at 15 and PG-4). At that stage, Complainants accepted Massachusetts Electric's pole count in order to reduce controversy.

Since its Response, however, Massachusetts Electric has continued to change and reduce the number of poles and further increase its proposed pole attachment rates at issue in this proceeding. (Tr. 1 at 89-92). In an amended pole count schedule provided to Complainants during discovery, Massachusetts Electric removed additional poles, claiming that these were transmission poles and street-light poles for which there was no associated investment in Account 364. (Exhibit MECo-6). Since then, in a post hearing response to a record request asking for its metal pole count, it has repudiated that testimony and its discovery responses in order to further increase its rate calculations, based upon its latest position that metal poles,

which it previously characterized as unusable for attachments (Tr. 1 at 10) are in fact used by cable. (MECo Response to Record Request CABLE-RR-1).

Because Massachusetts Electric is the sole repository of internal data on its pole counts and on the use of poles for attachments, Massachusetts Electric bears a special responsibility to come forward with accurate information upon which the parties in their negotiations and the Department, in the event of a complaint proceeding, are entitled to rely. Repeated changes in this type of data make it difficult, if not impossible, for attaching parties to negotiate pole attachment rates with any confidence that all nonpublic record variables in the rate formula are accurate. (Tr. 1 at 89-92). Moreover, attaching parties should not be faced with an ever escalating rate**C**which exceeds the amount requested in the mandatory 60 day notice**C**after they have filed their complaint.[26] In the present case, Massachusetts Electric's latest change in the pole count to be used for rate calculation purposes further increased the originally noticed pole rate increase, came at the close of the record and has not been subject to cross-examination. On this record, and given Massachusetts Electric's ever-changing positions both during and after the close of hearings, the Department should use the equivalent pole count offered by Massachusetts Electric in its Response and used by Mr. Glist in his calculations for Complainants. Such a ruling would be consistent with FCC pole attachment practice, which would deem the produced and agreed-upon number to be admitted and the case would go forward with pole counts

[26] This type of abuse of the complaint process was most evident in the *Cablevision of Boston* case, where the utility sponsored new proposed rates that exceeded the originally noticed pole rate increase by over 50%. The Department should not allow utilities to seek pole attachment increases which exceed the increases identified in their 60 day notices which are mandated under Department regulation.

removed from issue.[27] Thus, the total number of pole equivalents in Account 364 should be 335,486. (Exhibit CABLE-1 at PG-4; Exhibit MECo-19).

E. The Department Should Determine Deferred Taxes Without Any FAS 109 Adjustment Proposed By Massachusetts Electric

Under the FCC formula, the most common methodology used to calculate accumulated deferred taxes is to use FERC Account 282. (Exhibit CABLE-24, Glist Tr. 1 at 95). The Department expanded on that methodology in *Cablevision of Boston*, at the request of the utility in that case, by looking to two FERC accounts**C**FERC Accounts 281 and 282**C**to determine accumulated deferred tax amounts. (Exhibit CABLE-24). Such practices produces a solely owned pole rate of $9.00. (Exhibit CABLE-23). In this proceeding, in order to minimize the issues in dispute, Mr. Glist calculated deferred taxes under the most expansive construction he had ever seen, in an interim FCC staff request for an accounting accumulated deferred taxes in a case settled before decision: he looked to FERC Account 190 and Accounts 281 through 283. (Exhibit CABLE-1 at 19 and PG-4; Complainants' Response to DTE Cable-1-2; Exhibit CABLE-24; Tr. 1 34, 35, 95-96).

Massachusetts Electric, however, has departed from these standard calculations of accumulated deferred taxes by making a ratemaking adjustment for SFAS-109. (Exhibit CABLE-1 at 18). SFAS-109 is an accounting practice which attempts to account for accumulated deferred income taxes in a manner which accounts for all timing differences, looking forward to the likelihood of recovery from ratepayers and changes in levels of taxation.

---

[27] 47 C.F.R. § 1.1407(d); *Teleprompter Corp. v. Mountain States Tel. & Tel.*, PA 79-0037, 49 R.R. 2d. 557 ¶ 9 (1981) ("In the absence of a direct attack on any component of the telephone company's carrying charge, we generally accept that figure unless it contains an element which on its face raises questions requiring further investigation.").

(Tr. 1 at 29-30). Such an adjustment is not permitted under the FCC or *Cablevision of Boston* methodology. Complainants did not make this adjustment, in additional reliance on a conversation with FERC staff and their reference to FERC's Chief Accountant's guidance letter to all jurisdictional utilities concerning SFAS-109. FERC, *Accounting for Income Taxes* (April 23, 1993) ("It is axiomatic that accounting statements issued by the FASB for use in general purpose financial statements of business entities should not, in itself, have an economic rate effect on a regulated entity or its customers."). (Exhibit CABLE-1 at 18, 19).

In his testimony before the Department, Mr. Glist demonstrated how a normal level of deferrals and reversals of deferrals is reflected each year in pole attachment accounting, as the pole rates are annually updated. (Exhibit CABLE-1 at 18, 19). This practice thus obviates the need for forecasting the long term probabilities of future tax liability, recovery from ratepayers, and estimated future tax effects of temporary differences and carryforwards, which underlie SFAS-109. In doing so, the pole formula creates a compromise that disadvantages utilities and cable operators in different ways, but which undoubtedly disadvantages both groups. Massachusetts Electric, in attempting to incorporate the FAS-109 adjustment, seeks to reshape the accounting conventions underlying the pole formula to best suit its interests. The Department should not allow parties to "cherry pick" and manipulate pole formula accounting practices, which inevitably would lead to more frequent efforts by parties to stray from the application of a simple, efficient and predicable formula in future cases.[28] Indeed, if one were to

[28] *Nevada State Cable Television Association v. Nevada Bell*, PA 96-001, DA 98-1175 ¶ 17 (rel. June 18, 1998) ("We also reject Nevada Bell's modification because adjustments to one account would necessitate adjustments to other accounts and 'unduly complicate the pole attachment rate calculation process without materially increasing its accuracy.'").

effect a SFAS-109 adjustment, one would need to make certain that all other items also were adjusted, including construction work in progress (CWIP), allowance for funds used during construction (AFUDC), projected changes in tax law rates, and reported balances of plant in service. One would also need to make certain that all necessary adjustments were reflected properly on the company books. These adjustments are often the source of controversy even among accountants.[29] (Exhibit CABLE-1 at 18, 19).

While the Department certainly could design a pole ratemaking system which replicates a full utility rate case, this would require offsetting adjustments. For example, a negative working capital adjustment would be required to reflect cable operators' payments in advance, and the FAS adjustments to pension expenses (as shown at the same source- FERC Form 1 at page 232- as Massachusetts Electric uses for FAS 109) would be required to offset pension expenses which are loaded into Account 926 of the administrative carrying charge. (Tr. 1 at 95-96). That change, however, would undercut the Department's stated objective of having simple and expeditious pole attachment procedures,[30] and would open the door to allow utilities to conduct miniature rate cases before the Department in the future. (Tr. 1 at 33-34). The Department properly decided against that type of approach in *Greater Media* at 33-34 (DPU 91-218 (1992)), however, and recently reaffirmed its preference for a straightforward and self-executing formula to determine pole attachment fees in *Cablevision of Boston*. If the Department wishes to apply the formula used in *Cablevision of Boston*, the proper calculation would yield rates of $9.08 and

---

[29] An example from FERC is *Kentucky Utilities Company*, Docket Nos. FA96-4-000 and FA96-4-001, 78 F.E.R.C. P62, 127, 1996 FERC LEXIS 2443 (Jan. 7, 1996).

[30] *Nevada State Cable Television Association v. Nevada Bell*, PA 96-001, DA 98-1175 ¶ 17 (rel. June 18, 1998).

$4.54, respectively, for solely-owned and jointly-owned poles. If the Department wishes to adopt a broader approach, but reject the FAS 109 adjustment proposed by Massachusetts Electric, the proper calculation would yield rates of $9.04 and $4.52, using Accounts 190, and 281-283. (Exhibit CABLE-24).

F. In Other Respects, The Department Should Adopt the Rate Calculations Presented By Mr. Glist

1. Accumulated Depreciation

Massachusetts Electric and Complainants have implemented slightly different methodologies for calculating the accumulated depreciation carrying charge for Massachusetts Electric's pole plant. Complainants have used the methodology for calculating accumulated depreciation for poles which was adopted in *Cablevision of Boston*: apportioning accumulated depreciation for distribution plant to poles by the ratio of pole to distribution plant investment.

While Massachusetts Electric follows nearly the same methodology, Massachusetts Electric offers the further refinement of removing from the denominator of the allocator the investment it has in non-depreciable land and land rights. (Exhibit CABLE-1 at 19, 20). This has the effect of increasing the amount of accumulated depreciation apportioned to poles, lowering the rate base, and lowering the pole rent by a few cents. *Id.* While Complainants do not object to reducing the rent, Massachusetts Electric's method has not yet been approved by the Department or FCC. Therefore, although Complainants' adherence to the FCC formula produces a slightly higher rent than might be derived through a somewhat more complex calculation, Complainants prefer to keep pole proceedings on a course where, in the future, the formula may be run outside of hearing and without need for routine regulatory intervention.

2. Total Electric Plant Investment

In calculating the carrying charges for Massachusetts Electric's pole attachment rate under the FCC and Department formula, Complainants yielded to certain Massachusetts Electric's accounting practices in an effort to narrow the issues in controversy.

In this case, Massachusetts Electric developed its proposed rate by using gross plant investment at page 200, line 13 of Massachusetts Electric's FERC Form 1. (Exhibit MECo-13 at 150, DMW-1, at 1, line 5; Exhibit MECo-5). Complainants' expert, Mr. Glist, was familiar with other FCC pole rate calculations using this line entry (for example, *Group W Cable v. Northern States Power*, PA 82-0075, Mimeo 5939 (Aug. 16, 1983)), and therefore accepted the carrying charge entry order to reduce the number of issues in dispute. It is customary in FCC pole rate cases that a party may accept a carrying charge entry offered by the other to narrow disputes. (Exhibit CABLE-23). Indeed, in the *Cablevision of Boston* proceeding before the Department, the complaining cable operators used the gross plant investment entry offered by Boston Edison. (Exhibit CABLE-23).

Where parties dispute the carrying charge entry used in the calculation of pole attachment rates, the FCC uses "gross plant investment, page 200, line 8, column b" as the default entry.[31] Had Complainants chosen to contest Massachusetts Electric's use of the investment figure at line 13, the line 8 default figure would have produced a slightly higher pole attachment rental rate. (Exhibit CABLE-23).

Finally, the Department requested Complainants to calculate the pole rental rate using the carrying charge investment information from page 200, line 3. (Tr. 1 at 103, 104). Unlike the

---

[31] *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, CC Docket No. 86-212, 2 FCC Rcd. 4387 (1987).

investment reported in line 8, line 3 covers classified plant only (Tr. 1 at 103; Complainants' Response to Department Record Request DTE-RR-2), while the administrative and tax expenses used in the development of the carrying charge are incurred with respect to at least the total plant reported in line 8. Therefore, if line 3 were used, the total administrative and tax expenses incurred would be overstated.

G. The Rates Determined in this Proceeding Should Be Effective As of February 1, 1998, As Between Massachusetts Electric and the Complainants In Accordance with the Agreement of the Parties

By letter agreement dated March 20, 1998, the parties determined that Massachusetts Electric's pole attachment rates, as determined by the Department, would be effective as of February 1, 1998, the date on which the proposed increase would have become effective in the absence of their extended negotiations. During the course of this proceeding, on August 14, 1998, Complainants and Massachusetts Electric executed an "Offer of Partial Settlement," ("Settlement Agreement") resolving certain matters concerning the billing of pole attachment fees to Greater Worcester Cablevision and MediaOne. As part of the Settlement Agreement, the parties agreed to a schedule for the payment of pole attachment rates to Massachusetts Electric. That term of the Settlement Agreement stated:

> Upon issuance of a final decision by the Department, Mass. Electric shall charge and all Complainants, including Greater Worcester Cablevision and MediaOne, shall pay for pole attachments at the rates determined by the Department, such rates to be deemed effective as of February 1, 1998, together with any interest due from Complainants or from Mass. Electric . . . .

Based upon the original letter agreement dated March 20, 1998 and the subsequent Settlement Agreement, Complainants request that the rates as determined by the Department in this proceeding be made effective as of February 1, 1998.

H. The Pole Attachment Rates Recommended by the Complainants Adequately Take into Consideration the Interests of Electric and Cable Customers

Under G.L. c. 166, § 25A, the Department must take into account the interest of electric and cable customers in determining pole attachment fees within the range of reasonableness established by the statute. In the past, the Department has found that a fully allocated cost-based rate adequately considers the interests of electric and cable customers. It has found that because pole attachment fees represent a very small portion of utility retail revenues, pole rate reductions required to conform attachment rates to the upper end of the statutory range of reasonableness do not adversely impact utility customers. *Greater Media, Inc*. at 41; *Cablevision of Boston* at 45.

In the present case, the record supports a finding and ruling by the Department that adoption of the fully allocated cost-based rate recommended by the Complainants adequately accounts for the interest of electric and cable customers. Electric customers will receive the benefit of this fully allocated cost-based statutory maximum rate so long as Massachusetts Electric continues to provide a revenue credit for attachment fees in setting electric rates. *See*, *Massachusetts Electric Co.*, D.P.U. 95-40 (1995). Cable customers benefit from the Department's restraining Massachusetts Electric from charging excessive pole attachment fees and by reducing cost pressures that might contribute to rate increases (*e.g.*, the filing of a cost of service based rate increase, as opposed to a formula-based rate filing, or the setting of a formula-based rate closer to the maximum permitted rate). As in past cases, pole attachment fees represent a very small fraction of Massachusetts Electric's 1997 retail revenues (Exhibit MECo-5), and the adoption of the pole attachment rates recommended by Mr. Glist would not cause any increase in the Company's retail electric rates. Further, as can be seen from Complainants'

response to Supplemental MECO-8, pole attachment fees are not an insignificant amount in comparison to monthly basic service tier cable rates. (Complainants' Response to Supp. MECO-8).

IV. CONCLUSION

For all of the above reasons, the Department should adopt a pole attachment rate based on the FCC and Department formula, at $9.08 for solely-owned poles and $4.54 for jointly-owned poles. The Department should reject Massachusetts Electric's attempt to inflate its pole attachment rates through deviations from the FCC/Department rate formula usable space and accounting cost components, which have been promulgated and reaffirmed by the FCC and adopted and applied by the Department in the *Cablevision of Boston* decision. Through these actions, the Department will preserve the fair and efficient approach to the determination of attachment fees based on the FCC formula which it set in motion in its *Greater Media* decision and extended to pole attachments just a few months ago in *Cablevision of Boston.*

Respectfully submitted,

A-R CABLE SERVICES, INC., ET ALS.

By their attorneys,

_____
William D. Durand
Executive Vice President, Chief Counsel
New England Cable Television Association, Inc.
100 Grandview Road
Braintree, Massachusetts 02184
(781) 843-3418

_____
Alan D. Mandl
Ottenberg, Dunkless, Mandl & Mandl LLP
260 Franklin Street
Boston, Massachusetts 02110
(617) 261-6566

Dated: September 17, 1998